IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/12/2003

CORAM

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
AND
THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

T.C.No.350 of 2001

M.Raghavan .. Appellant

-Vs-

Assistant Commissioner of Income Tax,
City Circle V (1),
Chennai-600 006. .. Respondent

Tax Case (Appeal) against the order dated 16-5-2001 in
I.T.A.No.447/Mds/97 (Assessment Year 1994-95) on the file of the Income Tax Appellate Tribunal, Madras Bench 'A'.

!For appellant : Mr.M.S.Subramanian

^For respondent: Mr.J.Narayanasamy, Jr. Standing Counsel for I.T.

:JUDGMENT

(Judgment of the Court was delivered by R.Jayasimha Babu,J.)
The assessment year is 1994-95.
2. The assessee who is a senior advocate, sold 371 volumes of books, all of which except 14 volumes, had been purchased between 1984 and 1988 and the remaining 14 between 1988 and 1993, for a sum of Rs.1,2 5,000/-. Out of that, a sum of Rs.15,500/- was paid as commission to the bookseller.
3. The assessee claimed that the balance of Rs.1,09,500/- was not liable to be taxed, as that amount was the sale proceeds of capital assets and that amount was less than the indexed cost of acquisition of those capital assets.
4. That claim was uniformly rejected by the assessing officer, appellate authority, as also by the Tribunal, by placing reliance on Section 50 of the Income Tax Act.
5. It is not in dispute that the books sold by the assessee are capital assets, in respect of which depreciation had been allowed under Section 32(1) of the Act. The extent of the depreciation was the whole of the actual cost of the books, as the value of each book did not exceed Rs.5,000/-. First proviso to Section 32(1) as it stood between 1.4.1984 and 1.4.1996, during which period the assessee had purchased these books, reads as under:

" ...
Provided that where the actual cost of any machinery or plant does not exceed five thousand rupees, the actual cost thereof shall be allowed as a deduction in respect of the previous year in which such machinery or plant is first put to use by the assessee for the purposes of his business or profession."

6. What the assessee receives by reason of the value of the asset being less than Rs.5,000/-, is depreciation which is allowed at a rate which is equal to the full cost of the asset that is acquired.
7. Section 50 of the Act which was introduced with effect from 1.4.1988, is titled "Special provision for computation of capital gains in case of depreciable assets". The opening part of Section 50 reads thus:
"Notwithstanding anything contained in clause (42-A) of Section 2, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed under this Act or under the Indian Income-tax Act, 1922 (11 of 22), the provisions of Sections 48 and 49 shall be subject to the following modifications:-
.... "
It is not necessary to refer to sub-section (1) thereunder, as that admittedly does not apply to the facts of the assessee's case. Subsection (2) however is relevant and material. That sub-section (2) reads as under:-

" ... where any block of assets ceases to exist as such, for the reason that all the assets in that block are transferred during the previous year, the cost of acquisition of the block of assets shall be the written down value of the block of assets at the beginning of the previous year, as increased by the actual cost of any asset falling within that block of the assets, acquired by the assessee during the previous year and the income received or accruing as a result of such transfer or transfers shall be deemed to be the capital gains arising from the transfer of short term capital assets."

8. Clause (42-A) of Section 2 defines "short term capital asset" as meaning a capital asset held by an assessee for not more than 36 months immediately preceding the date of its transfer. That period is reduced to 12 months in respect of shares or other security it held in a company which is listed in a recognised stock exchange or a unit of the Unit Trust of India or a unit of a specified Mutual Fund.
9. Sections 48 and 49 of the Act deal with the mode of computation of income chargeable under the head "capital gains", and the cost with reference to certain modes of acquisition, respectively.
10. Section 50, as the heading to that Section specifies, is a special provision for computation of capital gains in case of depreciable assets. Capital gains derived from the sale of such depreciable assets are to be computed in the manner provided in Section 50.

11. Section 50(2) refers to block of assets. Block of assets is defined in Section 2(11). That definition as it stood from 1.4.1988 to 1.4.1999 reads thus:-

"Block of assets means a group of assets falling within a class of assets comprising --

(a) tangible assets, being buildings, machinery, plant or furniture;
(b) ....
in respect of which the same percentage of depreciation is prescribed."

12. In order to constitute a block of assets, the assets must form part of a group, which fall within the same class and for the members of which group, depreciation prescribed is of the same percentage. It is the books on which the assessee had received depreciation, which books were regarded by the assessee, as also by the Revenue, as falling within the class "plant". It is not in dispute that the depreciation had been claimed under Section 32 in respect of each book and that all the books that were sold belong to the same group, being books, all of which are within the same class "plant".
13. Section 50(2) refers to the written down value of the block of assets. Written down value is defined in Section 43(6) of the Act. Section 43(6)(b) is the relevant sub-clause for the purposes of this case. Section 43(6)(b) reads thus:

"In the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this Act, or under the Indian Income-tax Act, 1922 (11 of 1922), or any Act repealed by that Act, or under any executive orders issued under the Indian Income-tax Act, 1886 (2 of 1886) was in force:
Provided that in determining the written down value in respect of the buildings, machinery or plant for the purposes of clause (ii) of sub-section (1) of Section 32, "depreciation actually allowed" shall not include depreciation allowed under the sub-clauses (a),(b) and (c) of clause (vi) of sub-section (2) of Section 10 of Indian Incometax Act, 1922 (11 of 1922), where such depreciation was not deductible in determining the written down value for the purposes of the said clause (vi)."

14. Thus, the written down value in case of assets acquired before the previous year relevant to the year of assessment, is the actual cost of the asset less all "depreciation actually allowed".
15. Sub-clause (c) of Section 43(6) defines written down value in the case of any block of assets. For the purpose of this case, it is sufficient to set out the opening part of sub-clause (i) thereunder, as also sub-clause (ii).

Section 43(6)(c)(i): "In respect of any previous year relevant to the assessment year commencing on the 1st day of April, 1988, the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year and adjusted ... "

Section 43(6)(c)(ii): "In respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 1989 , the written down value of that block of assets in the immediately preceding previous year as reduced by the depreciation actually allowed in respect of that block of assets in relation to the said preceding previous year and as further adjusted by the increase or the reduction referred to in item (i)."

Explanations thereunder are not material for the purpose of this case.

16. What is significant in Section 43(6)(c) is that the written down value of the block of assets is stated to be the aggregate of the written down values in sub-clause (i), and the written down value of the block of assets in the immediately preceding previous year in sub-clause (ii). In order to ascertain the written down value referred to in sub-clause (c) of Section 43(6), one has to look at the definition of the "written down value" in Section 43(6)(a) and (b). In Section 43(6)(a), in case of assets acquired in the previous year, it is the actual cost to the assessee, and in Section 43(6)(b), in case of assets acquired before the previous year, it is the actual cost to the assessee, less all "depreciation actually allowed."
17. Thus, for the purpose of Section 50(2), the assets in respect of which depreciation had been allowed under Section 32(1) proviso, being the amount equal to the actual cost of acquisition, that being the extent of "depreciation actually allowed", the whole of the amount received by the assessee when the assessee sold those depreciated assets, is required to be treated as a capital gain arising from the transfer of short term capital assets.

18. Learned counsel for the assessee submitted that the reference of written down value in Section 50(2), as also the reference to " depreciable assets" and the title to Section 50, would indicate that even at the time of sale, the asset must be one which was continuing to suffer depreciation, and in respect of which the written down value after allowing depreciation at a specified percentage, was ascertainable, and that this provision would have no application to assets for which depreciation had been allowed under Section 32(1) proviso, having regard to the value of those assets being less than the amount specified in that proviso, the amount of depreciation so allowed being the full value of the cost of acquisition. It was also his submission that the reference to depreciation being at the same rate for the group of assets falling within the same class in the definition of " block of assets" would also indicate that it is only assets which are depreciated at a rate which is less than 100% that can be taken note of for the purpose of Section 50 of the Act.
19. Having regard to the relevant provisions of the Act which we have set out earlier and the effect of the same which also have been set out, we do not find it possible to accept the submissions so made for the appellant/assessee.
20. The assessee does not dispute the fact that the books are " plant" and that depreciation claimed has been actually allowed on that basis. Plant is a depreciable asset for which, rates of depreciation have been prescribed in the Depreciation Table in Appendix□I of the Income Tax Rules with reference to different items falling within the class of "plant". The fact that the assessee had the benefit of depreciating his asset in full in the year of acquisition itself, does not render the benefit received by the assessee something other than depreciation. The asset that the assessee acquired was depreciable asset. The assessee, as also the Revenue, regarded each book as to constituting a separate "plant" and the actual cost of acquisition had been allowed as depreciation, as the value of each book was less than Rs.5,000/-. The assessee thus had actually received the benefit of

depreciation under Section 43(6)(b). The written down value of the asset is the cost of acquisition less the quantum of depreciation actually allowed. 100% of the cost having been allowed as depreciation, the written down value of the asset of which the assessee had acquired, became 'nil'. The amount that was realised by the assessee when he later sold those depreciated assets, was the amount from which the written down value of the asset that was sold was to be deducted, was "nil". The whole of the amount received by the assessee from that sale was therefore was required to be treated as and has rightly been treated as capital gain arising from the transfer of short term capital asset.

21. The assessee's claim that he should have the right to indexing the cost of acquisition by invoking Sections 48 and 49, is untenable. The assets sold by the assessee being depreciable assets, what is provided in Sections 48 and 49 is subject to the modifications set out in Section 50 and therefore, the assessee is not entitled to any indexing.

22. It would appear that the object of introducing Section 50 in order to provide different method of computation of capital gain for depreciable assets, was to dis-entitle the owners of such depreciable assets from claiming the benefit of indexing, as if indexing were to be applied, there would be no capital gain available in most cases, for being brought to taxation. The value of depreciable asset in most cases comes down over a period of time, although there are cases where the sale value of a depreciated asset exceeds the cost of acquisition. The result of allowing indexing, if it were to be allowed, is to regard the cost of acquisition as being very much higher than what it actually is, to the assessee. If such boosted cost of acquisition is required to be deducted from the amount realised on sale, in most cases, it would result in a negative figure, resulting in the assessee being enabled to claim a capital loss. Clearly, it could not have been the legislative intent to confer such multiple benefits to assessees selling depreciable assets.

23. The appeal is therefore dismissed. The assessing officer will comply with the directions which had been given by the Commissioner and whose directions have been affirmed by the Tribunal, expeditiously having regard to the fact that the assessee is an octogenarian.

Index: Yes
Internet: Yes

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